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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,355	11/17/2003	Munchiro Tabata	040356-0496	9164
22428	7590	11/02/2004	EXAMINER	
FOLEY AND LARDNER			NGUYEN, TU MINH	
SUITE 500			ART UNIT	PAPER NUMBER
3000 K STREET NW				
WASHINGTON, DC 20007			3748	

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/713,355	TABATA ET AL.
	Examiner	Art Unit
	Tu M. Nguyen	3748

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 17 November 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>111703,032204</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, and 5-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi et al. (European Patent Application EP 1,174,600 A2) in view of official notice.

Re claims 1, 12, and 13, as shown in Figures 1 and 4-7, Kobayashi et al. disclose a purification device for an exhaust gas of a diesel engine and a method for controlling said purification device, the device comprising:

- a catalyst (17) which traps nitrogen oxides in the exhaust gas but decreases a nitrogen oxides trapping performance when poisoned by sulfur oxides in the exhaust gas, the sulfur oxides poisoning the catalyst being eliminated by contact with an exhaust gas corresponding to a rich air-fuel ratio;

- a filter (18) which traps particulate matter in the exhaust gas and burns a trapped particulate matter by contact with an exhaust gas corresponding to a lean air-fuel ratio;

- an air-fuel ratio regulating mechanism (8, 9, 10) which varies an exhaust gas composition of the engine between a composition corresponding to the lean air-fuel ratio and a composition corresponding to the rich air-fuel ratio;
- a sensor (120, 130) which detects a particulate matter trap amount of the filter; and
- a programmable controller (9) programmed to:
 - control the air-fuel ratio regulating mechanism to cause the exhaust gas composition of the engine to be in a state corresponding to the rich air-fuel ratio (step S401 with YES answer, step S405 with YES answer, and step S407);
 - determine whether or not the particulate matter trap amount has reached a predetermined amount while the exhaust gas composition is in a state corresponding to the rich air-fuel ratio (step S402 and Figure 5);
 - control the mechanism to cause the exhaust gas composition to be in a state corresponding to a high temperature (step S406), when the particulate matter trap amount has reached the predetermined amount during a period when the exhaust gas composition is in a state corresponding to the rich air-fuel ratio (step S405 with NO answer and step S406) ;
 - determine whether or not the particulate matter trap amount has reached a predetermined decrease state during a period when the exhaust gas composition is in the state corresponding to a high temperature (step S405); and
 - control the mechanism to cause the exhaust gas composition to be in a state corresponding to the rich air-fuel ratio, when the particulate matter trap amount has reached

the predetermined decrease state during the period when the exhaust gas composition is in the state corresponding to a high temperature (step S405 with YES answer and step S407).

Kobayashi et al., however, fail to disclose that the during the regeneration of the filter in step S406, the exhaust gas composition is in a state corresponding to a lean air-fuel ratio.

It is well known to those with ordinary skill in the art that in order to burn trapped particulate matters in a filter in Kobayashi et al., the exhaust gas must contain excess oxygen or in other words, the exhaust gas composition must be in a state corresponding to a lean air-fuel ratio. Therefore, such disclosure by Kobayashi et al. is notoriously well known in the art so as to be proper for official notice.

Re claim 2, in the purification device of Kobayashi et al., the sensor comprises a sensor (120, 130) which detects a differential pressure between an inlet and an outlet of the filter.

Re claim 5, in the purification device of Kobayashi et al., the air-fuel ratio regulating mechanism comprises an intake throttle (8) which regulates an intake air amount of the engine.

Re claim 6, in the purification device of Kobayashi et al., the air -fuel ratio regulating mechanism comprises a fuel injector (10) which injects fuel into the exhaust gas of the engine.

Re claim 7, in the purification device of Kobayashi et al., the engine comprises an exhaust gas recirculation passage (23) which recirculates part of the exhaust gas into an intake air according to an exhaust gas pressure of the engine, and the air-fuel ratio regulating mechanism comprises an exhaust throttle (25) which regulates the exhaust gas pressure.

Re claim 8, in the purification device of Kobayashi et al., the engine comprises a fuel injector (19) which supplies fuel for combustion, and the air-fuel ratio regulating mechanism comprises the fuel injector set to perform a post-injection after fuel is supplied for combustion.

Re claims 9-10, in the purification device of Kobayashi et al., the controller is further programmed to determine that, when the exhaust gas composition of the engine has continued to be in the state corresponding to the lean air-fuel ratio for a predetermined time, the particulate matter trap amount has reached the predetermined decrease state (steps S405-S406), wherein the predetermined amount corresponds to a state where the particulate matter trap amount is saturated, and the predetermined decrease state corresponds to a state where the particulate matter trap amount is zero.

Re claim 11, in the purification device of Kobayashi et al., the predetermined decrease state corresponds to a differential pressure when the controller started to control the air-fuel ratio regulating mechanism for the first time to cause the exhaust gas composition of the engine to be in the state corresponding to the rich air-fuel ratio.

3. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi et al. in view of official notice as applied to claim 1 above, and further in view of legal precedent.

The purification device of Kobayashi et al. discloses the invention as cited above, however, fails to disclose that the state of the exhaust gas composition corresponding to the rich air-fuel ratio, corresponds to an exhaust gas produced by combustion of an air-fuel mixture wherein an excess air factor is within the range 0.95 to 1.0; and that the state of the exhaust gas

composition corresponding to the lean air-fuel ratio, corresponds to an exhaust gas produced by combustion of an air-fuel mixture wherein an excess air factor is within the range 1.05 to 1.1.

Kobayashi et al. disclose the claimed invention except for specifying an optimum range of excess air factor of 0.95 to 1.0 and 1.05 to 1.1 for the rich air-fuel ratio condition and the lean air-fuel ratio condition, respectively. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a specific optimum range of excess air factor for each of the rich air-fuel ratio and the lean air-fuel ratio condition, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Prior Art

4. The IDS (PTO-1449) filed on November 17, 2003 and March 22, 2004 have been considered. An initialized copy of each is attached hereto.

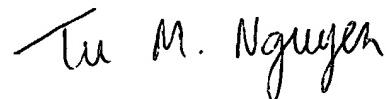
5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and consists of five patents and four patent applications: Murachi et al. (U.S. Patent 5,746,989), Hirota et al. (U.S. Patent 5,974,791), Russell (U.S. Patent 6,237,326), Morimoto et al. (U.S. Patent 6,708,487), Molinier (U.S. Patent 6,758,036), Kitahara (U.S. Patent Application 2003/0182936), Kitahara et al. (U.S. Patent Application 2003/0213235), Gui et al. (U.S. Patent Application 2004/0031262), and Imai et al. (U.S. Patent Application 2004/0035101) further disclose a state of the art.

Communication

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Tu Nguyen whose telephone number is (703) 308-2833 or (571) 272-4862 to be effective on November 24, 2004.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Thomas E. Denion, can be reached on (703) 308-2623 or (571) 272-4859 to be effective on November 24, 2004. The fax phone number for this group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.



TMN

Tu M. Nguyen

October 30, 2004

Patent Examiner

Art Unit 3748